

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint on Sunday
and Holiday Collections

Docket No. C2001-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE
IN OPPOSITION TO THE CARLSON MOTION TO COMPEL REGARDING
DFC/USPS-19 - 21
(July 9, 2001)

On June 26, 2001, Douglas Carlson filed a motion to compel responses to DFC/USPS-19 - 21. (The motion was amended in minor detail on July 2, 2001.) The complete text of the questions is included with the motion. The Postal Service had filed an objection regarding those items on June 4. These items all involve material regarding the Collection Box Management System (CBMS). The Postal Service hereby responds in opposition to the motion to compel.

General Relevance and Materiality

The Postal Service's June 28 filing opposing Mr. Carlson's motion to compel a further response to DFC/USPS-10(b) (regarding further facility-specific data on holiday mail processing) noted the danger of failing to see the forest for the trees, and observed Mr. Carlson's apparent preference to keep his focus on the trees. In the case of the CBMS data which is the subject of the instant motion, however, Mr. Carlson now wants to look not at individual trees, but at individual leaves on the trees. There are well in excess of 300,000 collection receptacles included in the CBMS database.

Moreover, Mr. Carlson doesn't just want to look at individual leaves, he wants to put them under a microscope. On pages 7-9 of his motion to compel, Mr. Carlson

purports to lay out the details of what can only be described as a mind-boggling undertaking in which he would examine, one at a time, the location ID number, the box address, the area of the address, the description of the address (e.g. "Fashion Plaza Shopping Mall"), the service class, and the type of box (e.g. snorkel, jumbo) for individual collection boxes. He claims (pg. 9) that "all data elements should be examined before one draws conclusions about particular collection boxes." The conclusions one draws about a particular collection box, apparently, relate to whether the box has any characteristics that suggest it might be a high-volume box, or otherwise plays a special role in collections. What one is supposed to do with these carefully-considered conclusions about particular collection boxes, however, is unexplained and inexplicable. Earlier (pgs. 4-5), the motion speaks of the alleged harm to customers that can be "quantified" and "calculated", apparently, by examining the number of boxes collected early and the number of hours they were collected early. The motion then goes on at great length about the need to examine all of the CBMS data elements requested for each box, but provides no hints as to how that information might relate to the calculations and quantifications described earlier.

Fundamentally, it is pointless to contemplate the type of micro-level analysis that Mr. Carlson wishes to pursue. Starting with the most basic flaw, the purpose of this proceeding is not to reconstruct the comprehensive and definitive history of every last detail of postal operations at any one particular time and place in the past, or any group of times and places in the past. This is not a trial in which the Postal Service will be found guilty or not guilty of failing to provide adequate service on President's Day 1995 or Labor Day 1998 or Christmas Eve 1999, and therefore every last speck of

information about what happened on those days needs to be identified and carefully evaluated. Section 3662 speaks only of parties who believe that they "are" not receiving appropriate service, and says nothing about parties who believe that they "did" not receive appropriate service in the past. Matters from the past without present or future consequences are not relevant. Granted, there tend to be inherent lags in the availability of current information, and in the ability of an administrative process to digest current information, so that an element of reliance on historical data is inevitable in proceedings such as this. Nevertheless, an excessive fixation with details specific to discrete historical incidents on unique days in the past, which is abundantly manifest in the micro-level analysis advocated in the motion to compel, is counterproductive.

Even temporarily putting that concern aside, however, the micro-level approach sought by Mr. Carlson adds nothing meaningful to the discussion, and would tend to put a misleading veneer of sophistication on an analysis that is woefully deficient. Take as an example the materials provided in LR-4 regarding advanced collections on Christmas Eve, 1999. That material shows the number of districts that adjusted their collections, and shows how their schedules were adjusted. To the extent that someone wishes to understand in some detail the scope and magnitude of collection adjustments on that day, perhaps as some guide to the scope and magnitude of adjustments that the Postal Service conceivably might make in the future when Christmas Eve falls on a Friday, the information already presented in LR-4 provides that possibility. For that purpose, the details provided in LR-4 paint a relatively good picture of what happened on that day in history.

Mr. Carlson, however, wishes to substitute for the picture we get from LR-4 a

picture constructed from the bottom up from micro-level data for each collection box. For example, in a district in which LR-4 indicates that all last pickups were advanced to 1 p.m., Mr. Carlson would seek to identify all boxes in that district, examine all data elements for each box (for purposes that are ultimately unclear), establish when the last pickup would have been scheduled for that box absent the adjustment, and calculate the number of hours that the last pickup was advanced for that box. It is his position (Motion at 4) that the amount of harm suffered from early collection is proportional to the number of hours that the collection is advanced.

There are a number of difficulties with this procedure. First, there is the issue of how information relating to individual collection boxes can meaningfully be aggregated. There are hundreds of thousands of collection boxes nationwide, and thousands of collection boxes in each district. Are all the hours simply summed up across all the boxes? If so, what is all the fuss about an alleged need to know what boxes might have higher volumes because of their location or their role within the system? If not, how are these factors quantitatively taken into account in the aggregation process? Or does Mr. Carlson take the view that no aggregation process is necessary, and that the Commission should base its conclusions on individual examination of information specific to each of tens or hundreds of thousands of collection boxes on a couple of particular days in previous years?

Second, it is not clear that this procedure would produce anything approaching an accurate estimate of the true amount of time that collections at particular boxes were advanced on those days. There are bound to have been a wide variety of things that actually happened with respect to the large numbers of individual collection boxes

involved that no analysis could ever identify, much less incorporate. The utility of a uniform notice that last collections are scheduled for 1 p.m. is that it alerts mailers not to deposit mail in boxes after 1 p.m. and expect it to be collected on that day. Logistically, however, it seems likely that not all boxes would have been collected exactly at the stroke of 1 p.m. If a box is normally collected at 4 p.m., and is collected on the holiday eve at 2:30 p.m. despite a noticed schedule adjustment to 1 p.m., should the estimated “harm” be 3 hours or 1.5 hours? To the extent that all mailers had notice of the schedule change and relied upon the adjusted schedule, it could be argued that the “harm” should still be calculated at 3 hours. But if all mailers had notice and adjusted their deposits accordingly, why is there any material harm at all?

This brings us to the most fundamental deficiency of this mode of analysis. The motion explicitly assumes (page 4) that “early collections always harm customers.” In fact, however, if no mail would have been deposited in the box after the time of the advance collection anyway, no one is harmed by the advanced collection (somewhat akin to the tree falling in the middle of the forest that makes no sound if no one is present to hear). More to the point, even if there were mailers who did deposit mail after the time of the early collection, would they have cared whether the mail was collected and processed that day or not? Mailers who do not care about the consequences of an early collection are not harmed by the early collection.

Overall, no procedure that purports to quantify “harm” by estimating aggregate hours of collection advancement would provide any meaningful improvement over the information directly obtained from LR-4 such as, in our example, that all final collections in a district were announced to be advanced to 1 p.m. Instead, what would emerge

would be a jumble of numbers that would obfuscate, rather than illuminate, consideration of the larger issues presented by this case. The material facts with respect to postal operations on holiday eves are now clear. During the Christmas holiday season in two previous years, 1999, and to a lesser extent, 1998, final collections on holiday eves in some identified areas were advanced. The only reported instance of advanced collections on the eve of a non-Christmas/New Year's holiday was July 3, 2000, and even in that instance, despite authorization from Headquarters, the practice was apparently limited to one geographic area. Further details on postal operations simply will not reveal whether any material number of postal customers perceive adjustments of this type to have any meaningful effect on their postal service.

To read Mr. Carlson's motion to compel, one might assume that we need to apply the analytical equivalent of rocket science to reach some conclusions on the appropriateness of advancing collections on what amounts essentially to two previous Christmas and New Year's Eves in some areas. Perhaps the ultimate irony is that no amount of science, rocket or otherwise, is going to resolve such an issue, or even necessarily increase the likelihood of a consensus on the matter. In many respects, the issue is one of philosophy. If one starts with Mr. Carlson's assumption that "early collections always harm customers," it is difficult to understand the alleged need for any examination of any facts at all. Mr. Carlson, of course, is as entitled to his opinion as any one else.

It is the opinion of the Postal Service, however, that the issue of advanced collections on holiday eves has now been demonstrated to be essentially a non-issue. Taken on its own, the Postal Service submits that the facts available indicate that the

holiday eve issue would most appropriately not be entertained by the Commission under the provisions of Rule 82 excluding complaints regarding localized or temporary service issues. Under the current posture of this proceeding, it is not unreasonable to maintain consideration of the matter as part of the broader examination of holiday service. It is, however, at most, a very questionable tail on the dog. The potential for delay of the entire proceeding should be carefully weighed against the lack of relevance and materiality of the analyses discussed in the motion to compel, even in the context of this one small tangential matter.¹

Mr. Carlson's discussion of the relevance of his CBMS data request is deficient in one other way. He neglects to discuss the fact that he has requested CBMS data for every box in the country, whereas the analyses he hopes to implement would only be applicable to those parts of the country (i.e., those districts identified in response to DFC/USPS-14) that actually advanced collections. Even for those districts that advanced collections, moreover, not all the data he has requested are relevant. For example, if a district advanced collections to a time certain, rather than shifted to a Saturday collection schedule, then the Saturday collection schedules for that district would not be applicable to his analysis. Moreover, Mr. Carlson has failed to articulate a coherent basis of how he would actually incorporate any information other than normal collection time and adjusted collection time into his calculation of "harm." Information

¹ It perhaps bears noting that the primary source of any as-yet-hypothetical delay associated with the conduct of the analyses discussed in the motion would not be the Postal Service's objections and the consequent motions practice. The analyses under any circumstances could not have begun until Mr. Carlson received the materials in LR-4, which were not requested until June 21, which were not delayed by any objections, and which were only mailed to Mr. Carlson on last Thursday, July 5.

about box addresses, box locations, box areas (business or residential), and box types are all unnecessary to that task, and he has therefore failed to establish any relevant application of the full examination of box characteristics that he discusses in such apparent detail.

Mr. Carlson's failure to tailor his motion to the types of data he has asserted he would use, or even to acknowledge that he is seeking far more information than he has asserted he would use, would be less troubling if it were not already clear that Mr. Carlson has long sought these data in other contexts, for other purposes. The consequences of this are twofold. First, a healthy skepticism should be maintained that Mr. Carlson's motion to compel is anything more than a post hoc attempt to justify an extremely broad-based fishing expedition. Second, in any discussion of relevance, care should be taken not to inadvertently bestow equal status to data from the sizeable subset of districts that are not even touched upon by the arguments presented in the motion, or to all data even from those districts that are involved.

The same flaw applies to that portion of the motion that discusses holidays, rather than holiday eves. On page 6, the motion suggests that the locations of the one percent of boxes that post a holiday collection time need to be compared to the service areas of the five facilities Mr. Carlson identified in DFC/USPS-26 that "may process mail on every holiday," in order to determine if the labels on those boxes are in accordance with the Headquarters instructions provided in response to DFC/USPS-3. In fact, however, the most Mr. Carlson would need to know with respect to that one percent of boxes to do his comparison would be the service area in which they are located. He doesn't need to know the street address, or the box type, or the weekday collection

schedule, or the Saturday collection schedule, or even the holiday collection schedule. Alternatively, he could simply have asked the Postal Service what portion of the one percent fell within the service areas of those five facilities. Even more simply, he could have asked the Postal Service to confirm that of the one percent of boxes that post a holiday collection time, the vast majority are unlikely to be, and are not, in compliance with the instruction to post a holiday collection time only if the mail in the box will be collected and processed every holiday. It appears as if Mr. Carlson has deliberately avoided asking the direct questions that would get him the information he claims to need because of an awareness that it would undermine the rationalization he has asserted to justify his fishing expeditions.

Public Disclosure

As discussed above, the motion to compel seeks the disclosure of information that would allow Mr. Carlson to embark down a path that would not advance the cause of addressing and resolving the issues presented within this proceeding in a timely and reasonable manner. On that basis alone, the Presiding Officer should deny the motion to compel and allow Mr. Carlson to refocus his attention on the extensive information that is already available with regard to holiday collection and processing practices, and the ample information that is already available on the quite rare instances in which collections are advanced on holiday eves. If a contrary conclusion is reached on this threshold matter, however, then it is necessary to reach an entirely separate set of issues raised by these discovery requests. Those issues involve public disclosure of the information requested.

A substantial portion of the motion to compel is an obvious preview of the

arguments that Mr. Carlson intends to make in the pending FOIA litigation. Mr. Carlson is convinced that the information he is requesting should be publically disclosed, even in the aggregated format he requests. The Postal Service, however, does not intend in this forum to attempt to address each and every one of Mr. Carlson's contentions, and believes that, in the context of this discovery dispute, it is unnecessary for the Presiding Officer to do so either. That position is based on two salient points.

First, the Postal Service maintains its view that there are serious and tangible interests at stake in handling this information with care. In consulting with the Inspection Service for purposes of responding to this motion, the following information was obtained. There are numerous crimes committed each year involving the theft of mail between the time that it is deposited in a collection box, and the time that it safely reaches a postal facility. It is not as if we are discussing the hypothetical possibility of such crimes being committed -- we know that such crimes, in fact, are committed on a daily basis. These crimes, ranging from breaking into collection boxes to robbing carriers at gunpoint, threaten both the security of the mails and the safety of postal employees.

One issue with regard to disclosure of aggregate CBMS information, therefore, is not whether it would allow such crimes to be committed at all, but rather whether it would potentially make such crimes easier to commit, or potentially make such crimes more difficult to prevent, and therefore marginally increase the risk to mail security and employee safety. It is the view of the Inspection Service that public release of an electronic nationwide database, or even a database that contains information for large areas such as entire districts, might have exactly those effects. In some instances, the

purposes of such crimes are to obtain signed checks that can be altered and fraudulently cashed. In other instances, the purpose is to obtain materials for identity theft. Although the individuals involved may be violent criminals, it would be naive to presume that the perpetrators of crimes such as identity theft are not sophisticated enough to use computer technology and information-gathering capabilities to make their tasks easier or reduce their risks of detection.²

The bottom line is that the law enforcement officials charged with the responsibility of securing the mails and protecting employee safety take the position that public disclosure of the type of CBMS information sought by Mr. Carlson would carry with it, in their view, an unacceptable measure of risk. Therefore, while the Postal Service does not intend to suggest that the above discussion exhaustively identifies all of the potential risks of public disclosure, the first salient point to be made is that those risks, while perhaps not quantifiable, are not illusory as Mr. Carlson maintains, and cannot simply be ignored.

The second salient point, however, is that in this instance, assuming for purposes of this discussion the relevance and materiality of the data which the Postal Service maintains is totally lacking, the potential harms of public disclosure could reasonably be avoided by imposition of protective conditions. In resolving this

² For example, the motion to compel at page 20 discusses the greater utility of on-site "casing" of the location of a potential crime, relative to mere perusal of a data base. The more time that thieves spend on the street directly observing carrier activities, however, the greater the chance that their excessive interest will be noted, and that the Inspection Service could respond appropriately. Savvy criminals could potentially use CBMS data obtained surreptitiously from the web or from a bootleg CD to narrow their search and minimize their need to rely on much higher profile on-site "casing."

discovery dispute, the Presiding Officer does not need to decide whether the whole world needs to have access to this data base, only whether Mr. Carlson should be granted access to the data base for purposes of this proceeding.

Other than its lack of relevance and materiality, the CBMS data base is a good candidate for protective conditions. First of all, it is the utility of the data base as a tool to evaluate and manipulate large amounts of information that creates the greatest risk of harm in the wrong hands. At the base component level, the information content itself, as Mr. Carlson emphasizes repeatedly, is not the issue – it could be obtained by mere inspection of the information already publicly displayed on each collection box. The Postal Service has only minimal concerns that Mr. Carlson, even with his impressive ability to absorb postal information, would be able to recall the details of individual collection boxes after the database were returned at the end of the proceeding. (Thus, it contrasts sharply with the facility-specific volume information discussed in the Postal Service's earlier response to Mr. Carlson's motion to compel regarding DFC/USPS-10 which, once disclosed, creates awareness of relative relationships that cannot so easily be eliminated from one's analytic memory.)

Second, the Postal Service anticipates no harm from disclosure of any of the possible results of the types of analysis of the data base that Mr. Carlson discusses in his motion. When there is no concern about the contents of the elements of the base data, there is no concern that interested parties could use data outputs to reach back and reconstruct data inputs. Once again, it is the scope of the raw data and the machine-based tool that poses the most risk, not the individual inputs, and not individual outputs. Therefore, there would appear to be no reason to expect that any

further procedural devices would need to be employed to safeguard the intermediate or final results of his data manipulations. Unless Mr. Carlson were to seek to incorporate truly massive amounts of collection box level data into his testimony or pleadings, the Postal Service would not anticipate any need to put documents under seal, or conduct closed portions of hearings. Once again, the situation in this instance differs substantially from that posed with respect to DFC/USPS-10 (facility-specific volume information).

Therefore, the Postal Service requests that if the Presiding Officer is inclined to grant Mr. Carlson (or the other intervenor) access to the CBMS materials that he has requested, over the continuing objections of the Postal Service, that it be done only under the standard terms of protective conditions utilized in Commission proceedings. See, for example, those attached to Presiding Officer's Ruling No. R2000-1/55 (April 28, 2000). The most important elements of those conditions, which are standard, are that the material be used "only for purposes of analyzing matters at issue in [this proceeding]," and that all copies of any version of the material be returned or destroyed at the end of the proceeding. Use of such protective conditions, particularly in a proceeding with as few participants as the instant one, would substantially satisfy the Postal Service's concerns regarding the potential harm of disclosure of the CBMS material at issue in the instant motion to compel.

Operating Manuals

While the above discussion relates to the CBMS materials that are the subjects of these requests generally, other matters merit separate discussion. DFC/USPS-20 requests operating manuals. For the reasons discussed above as to why calculations

of “harm” based on the CBMS database would add nothing material to what is in the record already, knowledge of the nuts and bolts of CBMS procedures is likewise unnecessary to address the fundamental issues in this proceeding. It is obvious from the motion to compel that Mr. Carlson already has access to large amounts of information about the CBMS. See, for example, pages 9 and 10, in which he identifies what he perceives as several technical deficiencies in the system. No doubt he would like to obtain any further information that might be in the manuals. The Postal Service maintains the view that this material is irrelevant and immaterial, and his request for it in this proceeding is little more than a pretext to obtain it for other purposes. Therefore, even if it were material or relevant, which it is not, access would appropriately be limited by the type of protective conditions discussed above.

Reporting Protocol

DFC/USPS-21 seeks relatively detailed information about the ways in which CBMS operating information (history files) is collected, formatted, and stored. Once again, this information is requested under the assumption that a micro-level analysis (i.e., working with information about individual collection boxes) constitutes a feasible and productive approach to addressing the issues in this proceeding. Rejecting that assumption, the Postal Service maintains that all of DFC/USPS-21 seeks information that is irrelevant and immaterial. Note that the premise of the approach contemplated by this question is not only to examine information about potentially hundreds of thousands of individual collection boxes, but to examine that information for particular days, or even for particular collections on particular days. This introduces a qualitative change in the potential magnitude of the analysis.

In terms of burden, the motion to compel indicates a willingness to limit the scope of the request for actual reports, in DFC/USPS-21(e), to those produced at the Headquarters level. Motion at 12. While that limitation is useful, no attempt is made to limit the scope of the request to reports relating to holidays or holiday eves. A report produced at Headquarters could meet all of the specifications of part (e) and still have absolutely nothing to do with any of the issues in this proceeding. Therefore, while burden may have been mitigated, the relevance objection still applies with equal force as before.

Database Burden

The motion to compel relies on correspondence relating to the Postal Service's response to the earlier FOIA request to support the assertion that there would be no undue burden in providing a machine-readable version of the entire nationwide CBMS database. See Motion at 9-11. This is somewhat ironic, as the experience with the FOIA material was the basis for the objection. As it turns out, however, the primary problems in responding to the FOIA request had occurred in the context of the hard copy material, regarding which Mr. Carlson had insisted on a format that could only be printed at the local level, and had created the need for an awkward exchange of material back and forth from San Mateo and the district. It was the anticipation of those types of concerns (i.e., the potential need for every district to get involved in preparing the information for boxes within their area) which had caused the Postal Service to assert problems of unknown magnitude.

In terms of the machine-readable version, those types of problems do not appear to apply. Therefore, there would be the burden of converting information from the

mainframe to an Excel-type format, transmitting that very large amount of information to Headquarters, and burning it onto a CD for purposes of filing. That process would involve approximately a day or two of effort, taking into account both ends of the exchange. The Postal Service maintains that even that amount of burden is undue, however, for information that is irrelevant and immaterial.

Conclusion

The information filed in response to DFC/USPS-14 and 40 is quite sufficient for the purposes of analyzing the issue of collection advancements on holiday eves. The instant motion to compel regarding DFC/USPS-19 - 21 is in large measure an argument that it is necessary to supplement that information with a micro-level analysis of data at the level of individual collection boxes, and that Mr. Carlson's sweeping request for nationwide CBMS data is therefore justified. Such an analysis on a relatively minor issue, however, is not necessary, and would constitute a pointless waste of time. Moreover, even were such an analysis to be conducted, it would not require the full panoply of data which Mr. Carlson insists is necessary. Finally, any large scale disclosure of aggregate CBMS data raises legitimate issues of mail security and employee safety, and if permitted at all despite the lack of materiality, should only be done under standard protective conditions.


Therefore, for these reasons, and all other reasons discussed above, the motion to compel responses to DFC/USPS-19 - 21 should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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